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Dated: January 13, 2010

Electronic Signature for William A. Di Bianca: /William A. Di Bianca/

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIPCIPCON III  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Errico et al.

Application No.: 10/784,598

Confirmation No.: 8307

Filed: October 12, 2004

Art Unit: 3738

For: INSTRUMENTATION FOR  
REPOSITIONING AND EXTRACTING AN  
ARTIFICIAL INTERVERTEBRAL DISC  
FROM AN INTERVERTEBRAL SPACE

Examiner: B. E.  
Pellegrino

**RENEWED PETITION UNDER 37 C.F.R. § 1.78(A)(3)**  
**TO CORRECT PRIORITY INFORMATION**

**ATTENTION: PAUL SHANOSKI**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. SUMMARY**

This renewed Petition is submitted in response to the Decision on Petition mailed on September 8, 2009. The original Petition to Correct Priority was filed on January 9, 2009 to correct the priority information in U.S. Patent Application 10/784,598 ("the '598 application"). The Petition fee set forth in 37 C.F.R. § 1.17(t) was provided with the original Petition on January 9, 2009.

In the original Petition, the Petitioner submitted that the Domestic Priority Data as stated in the Filing Receipt (mailed August 10, 2004), in the Corrected Filing Receipt (mailed November 10, 2004) and "Initial" Application Data Sheet (filed on December 12, 2004) was incorrect.

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In the original Petition, The Petitioner requested that the Domestic Priority Data be revised as shown in the Application Data Sheet filed on September 2, 2008, in the Request for Corrected Filing Receipt filed on September 2, 2008 and in the revisions to the specification in an Amendment filed on September 2, 2008, and submits that any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

However, the Petitioner filed the Supplemental Application Data Sheet on January 9, 2009 without specifying that the Application Data Sheet was **supplemental** in the title and inadvertently did not sign the Application Data Sheet as required.

Therefore, enclosed with this renewed Petition is a replacement Application Data Sheet which includes a complete title as a "Supplemental Application Data Sheet" and is signed by the Petitioner.

## **II. FACTS**

A statement of domestic priority data, on the first page of the specification of the '598 application, filed October 12, 2004, included a claim for priority under 35 U.S.C. §120. No Application Data Sheet was filed with the original application.

Subsequent to the filing of the '598 application, the '598 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and filed on October 8, 2004.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in the '598 application was incorrect. The prosecuting attorney filed an "Initial" Application Data Sheet on December 2, 2004 which inadvertently omitted the domestic priority information.

Thereafter, the prosecuting attorney recognized that the domestic priority information was incorrect and inadvertently filed an Amendment, including amendments to the Cross-Reference paragraph of the specification, Request for Corrected Filing Receipt and Application Data Sheet on September 2, 2008 without this Petition and related fee.

Thereafter, the Petitioner filed a Supplemental Application Data Sheet on January 9, 2009 without specifying that the Application Data Sheet was **supplemental** in the title and without executing the Application Data Sheet as required.

### **III. NATURE OF PETITION**

Petitioner respectfully submits this *renewed* Petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected as shown in the Supplemental Application Data Sheet enclosed with this renewed Petition and in amendments to the Cross-Reference to Related Applications paragraph of the specification included in the Amendment filed on September 2, 2008.

Petitioner notes that the fee set forth in 37 C.F.R. § 1.17(t) was provided on January 9, 2009. If there are any

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additional charges in connection with this requested renewed  
Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: January 13, 2010

Respectfully submitted,

Electronic signature: /William  
A. Di Bianca/

William A. Di Bianca

Registration No.: 58,653

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